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Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-837

NEW MOTOR VEHICLE BOARD OF THE STATE OF CALIFORNIA, and the DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, and DORIS V. ALEXIS, as Director of the Department of Motor Vehicles of the State of California,
Appellants,

VS.

ORRIN W. FOX CO., a corporation; MULLER CHEVROLET, a corporation; and GENERAL MOTORS CORPORATION,
Appellees.

On Appeal from the United States District Court for the Central District of California

BRIEF FOR APPELLANTS

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NEW MOTOR VEHICLE BOARD OF THE STATE OF CALIFORNIA, and the DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, and DORIS V. ALEXIS, as Director of the Department of Motor Vehicles of the State of California,
Appellants,

vs.

ORRIN W. FOX CO., a corporation; MULLER CHEVROLET, a corporation; and GENERAL MOTORS CORPORATION,
Appellees.

On Appeal from the United States District Court for the Central District of California

BRIEF FOR APPELLANTS

OPINION BELOW

The Memorandum of Decision filed by the District Court on September 14, 1977, is reported at 440 F. Supp. 436 and constitutes the Opinion below. The Opinion has been annexed as Exhibit A to the Jurisdictional Statement of the Appellants in Number

77-837 and as Appendix A to the Jurisdictional Statement of the Appellants in Number 77-849. References to the Opinion contained herein are to the reported Memorandum of Decision.

JURISDICTION

This suit, brought by General Motors Corporation and two motor vehicle dealers in Southern California, was commenced on April 13, 1976, by a Complaint for Declaratory Relief and Injunction filed in the United States District Court for the Central District of California. Appendix 1-81. The Complaint, which sought a declaration of the unconstitutionality of the Automobile Franchise Act and an injunction restraining enforcement of the Act's provisions by the New Motor Vehicle Board, the Department of Motor Vehicles, the Department's director, and their respective agents, alleged jurisdiction and venue in the aforementioned Court under 28 U.S.C. §§ 1331(a), 1337, 1343(3), 1391(b) and 2201.

A three-judge court, convened pursuant to 28 U.S.C. §§ 2281 and 2284, denied defendants-appellants' Motion to Dismiss and granted appellees' Motion for Partial Summary Judgment in an Opinion and Judgment filed on September 14, 1977.

The opinion of the Court held that the Act violated the Due Process Clause of the Fourteenth Amendment by depriving plaintiffs of liberty and property without prior notice and opportunity to be heard,

and by failing to provide for a prompt hearing after the initial deprivation. The opinion rejected the Board's contention that the District Court should abstain from exercising its jurisdiction and dismiss the suit. Defendant Board noted its appeal from the judgment filed concurrently with the opinion, on October 13, 1977. Defendants Department of Motor Vehicles and its Director noted their appeals the next day.

Subsequently, on October 18, 1977, a corrected judgment was filed pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, denying appellants' Motion to Dismiss and granting appellees' Motion for Partial Summary Judgment. The corrected judgment declared the relocation and establishment provisions of the Act unconstitutional for the reasons discussed in the Opinion, and enjoined enforcement of those provisions.

Appellants Director and the Department of Motor Vehicles noted their appeal from the corrected judgment on November 17, 1977. Appellant New Motor Vehicle Board noted its appeal on November 21, 1977.

The District Court's Summary Judgment, entered September 15, 1977, and the two notices of appeal therefrom, have been respectively designated Exhibits B, C and D to the Jurisdictional Statement on file herein. The District Court's Partial Summary Judgment, entered October 19, 1977, and the notice of appeal therefrom, have been respectively designated as Exhibits E, F, and G to the Jurisdiction Statement.

The jurisdiction of this Court to review the judgment of the District Court by direct appeal is conferred by 28 U.S.C. § 1253.

QUESTIONS PRESENTED

1. Does the prospective ability to grant or undertake a motor vehicle dealership, or to locate or relocate a dealership at a particular location, constitute a liberty or property interest subject to the protection of the Due Process Clause of the Fourteenth Amendment?

2. Assuming the existence of a protected liberty or property interest in appellees affected by the operation of California Vehicle Code section 3062, do the procedures of the California Automobile Franchise Act violate the requirements of due process because they do not provide for a hearing prior to occasioning delay of consummation of appellees' business expectancies?

3. Was the District Court required to abstain from exercise of its jurisdiction under the principles of *Younger v. Harris,* 401 U.S. 37 (1971) and *Huffman v. Pursue,* 420 U.S. 592 (1975), as explicated by this Court's recent decisions in *Juidice v. Vail,* 430 U.S. 327 (1977) and *Trainor v. Hernandez,* 431 U.S. 434 (1977)?

4. Did the doctrine of *Railroad Commission v. Pullman Co.,* 312 U.S. 496 (1941) require the District Court to abstain from the exercise of its jurisdiction?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment, which provides:

> ". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

United States Constitution, Amendment XIV, section 1.

Chapter 996 of the California Statutes of 1973, as amended, is the subject of this suit. The statute, referred to herein as the Automobile Franchise Act or "the Act," is codified in sections 3060 through 3069, inclusive, of the California Vehicle Code, and is reproduced in full as Exhibit H to the Jurisdictional Statement of the Appellants in Number 77-837. Selected provisions of the Act are reproduced in Appendix C to the Jurisdictional Statement of the Appellants in Number 77-849.

Additional provisions of the California Vehicle Code, the California Code of Civil Procedure, and other State statutory provisions, are set out in the margin as reference occurs and relevance requires.

STATEMENT

1. The California Automobile Franchise Act.

The California Automobile Franchise Act provides for state regulation of certain aspects of the relations between new motor vehicle franchisors and their

franchisees[1] which, the state has determined, vitally affect the welfare of the people of California, and establishes the New Motor Vehicle Board for that purpose. The Act imposes specific procedural requirements upon franchisors seeking to establish an additional motor vehicle dealership or relocate an existing dealership within ten miles of an existing dealership for the same line-make.[2] Except under statutorily-specified circumstances[3] the franchisor is required to provide written notification of its intentions to both the New Motor Vehicle Board and each franchisee of that line-make located within the relevant market area. Within fifteen days of receipt of

[1]California Vehicle Code sections 331.1 and 331.2, respectively, define "franchisee" and "franchisor" as follows:

> "§ 331.1. A 'franchisee' is any person who, pursuant to a franchise, receives new motor vehicles subject to registration under this code from the franchisor and who sells such vehicles at retail.
>
> "§ 331.2. A 'franchisor' is any person who manufactures, assembles, or distributes new motor vehicles subject to registration under this code and who grants a franchise."

[2]The language of the Act makes the requirements applicable "[i]n the event that a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership or relocating an existing motor vehicle dealership within or into a relevant market area where the same line-make is then represented . . ."

California Vehicle Code section 507 provides:

> "The 'relevant market area' is any area within a radius of 10 miles from the site of a potential new dealership."

[3]Effective January 1, 1978, section 3062 was amended to exclude from its operation "any relocation which is less than one mile from the existing location of the dealership and which is to a location within the same relevant market area within the same city where the existing dealership is located." (Cal. Stats. 1977, ch. 880, § 1; see Jurisd. Stmt. Appendix p. 72.) The transactions underlying the present suit do not come within the terms of this subsequent amendment.

the notification any franchisee entitled to notice may file with the Board a protest against the franchisor's intended action. Upon the filing of such a protest, the Board is required to inform the franchisor that the protest has been filed, that a hearing is required to be held pursuant to specific provisions of the Act, and that the franchisor shall not establish or relocate the proposed dealership until the Board has held the required hearing, nor thereafter if the Board should determine that good cause exists for not permitting such dealership. Cal. Veh. Code § 3062.

The Act does not require the Board to provide the franchisor, the franchisee proposed to be established or relocated, or the existing franchisee who files the protest, a hearing prior to informing the franchisor of the Act's requirements.

The Board must, however, order a hearing to be held, and such hearing must be within 60 days from the date of that order. Cal. Veh. Code § 3066(a). The procedures under which the hearing is conducted are prescribed by reference to specific provisions of the California Administrative Procedure Act. (Cal. Gov. Code §§ 11500 et seq.), a separate statute whose provisions are not challenged in this action. In protests against establishment or relocation of motor vehicle dealerships, the Automobile Franchise Act places the burden of proof upon the protesting franchisee to establish the existence of good cause *not* to permit the proposed action of the franchisor. Cal. Veh. Code § 3066(b).

The elements of proof which the protesting franchisee must establish are identified in California Vehicle Code section 3063, which provides:

> "In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line-make, the board shall take into consideration the existing circumstances, including, but not limited to:
>
> "(1) Permanency of the investment.
>
> "(2) Effect on the retail motor vehicle business and the consuming public in the relevant market area.
>
> "(3) Whether it is injurious to the public welfare for an additional franchise to be established.
>
> "(4) Whether the franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.
>
> "(5) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest."

The decision of the Board must be in writing and must contain findings of fact and a determination of the issues presented. Except under specified circumstances, the Board must act within 30 days after either the hearing or the date the Board receives the proposed decision of its hearing officer, as the case

may be. If the Board fails to act within the prescribed time, the proposed action of the franchisor is deemed approved. Cal. Veh. Code § 3067.

2. Material Facts.

a. Establishment of the Fox Dealership.

The Automobile Franchise Act became operative on July 1, 1974. Appendix 208.

On July 15, 1974, appellee General Motors Corporation's Buick Motor Division received an Application for Buick Selling Agreement from Richard L. Fox, president of appellee Orrin W. Fox Co. Deposition of S. G. Gilliatt, July 29, 1976, page 46. In the discussions and communications which followed, General Motors eventually acted favorably upon appellee Fox's application to become a Buick franchisee at 3456 E. Colorado Boulevard, in Pasadena, California. On April 1, 1975, General Motors formally offered appellee Fox the Buick franchise he sought, and Fox accepted the appointment on April 7, 1975. Appendix 138. Concurrent with these events of April, 1975, General Motors for the first time, on April 1, 1975, communicated with Fox concerning the necessity of compliance with the provisions of the Automobile Franchise Act, requiring the franchisor to notify existing franchisees and the New Motor Vehicle Board of its proposed action (Gilliatt deposition 45, Exh. 22; and Fox, on April 7, 1975, confirmed to General Motors the desire to accept the offered appointment "without giving notice to existing Buick dealers located within a 10-mile radius of 3456 E. Colorado

Boulevard." Appendix 210. In this latter communication, Fox assured General Motors that "[w]e recognize the risk potential insofar as the California Dealer Relations Statute (AB-225, as amended) and are willing to accept those risks." *Id.* Fox was thereafter franchised by General Motors as a Buick-Opel dealer, effective May 2, 1975, without notice to existing franchisees in the relevant market area. Appendix 138.

Notwithstanding appellees' failure to comply with the notification requirements of the Act, the enfranchisement of Fox became known and in mid-May, 1975, protests against the establishment of the new dealership were received by the New Motor Vehicle Board from Becherer Buick, Inc. and O'Donnell Buick-Opel, and were filed as Protest Number PR-35-75 and Protest Number PR-36-75 respectively. Affidavit of Sam W. Jennings, August 5, 1976, page 1. On May 29, 1975, the Board notified General Motors of each of the protests and informed it that under the provisions of California Vehicle Code §3062, "you may not establish . . . the proposed dealership until the Board has held a hearing as provided for in Section 3066 Vehicle Code . . ." Appendix 52, 54.

On July 8, 1975, after General Motors had applied for and been granted a 30-day extension of time to respond to protestants' discovery requests, the Board assigned the dates of August 11 and 12, 1975, for the hearing on the two protests. Jennings Affidavit 2. On August 4, 1975, some three months after the effective date of the Fox dealership establishment, the

Board received a notice from General Motors, dated July 24, 1975, stating that it intended to grant, and had granted, a Buick-Opel franchise to appellee Fox. *Id.*

On August 8, 1975, all parties to the protests against the Fox dealership establishment stipulated that the hearing thereon be continued to September 29 and 30, 1975. These dates were removed from calendar when the protestants obtained a stay order incident to a Sacramento County Superior Court proceeding brought to compel the Board to issue an order for depositions to be taken. Jennings Affidavit 3. After the court issued its decision in that matter, General Motors obtained a temporary restraining order from the Los Angeles County Superior Court prohibiting the taking of the depositions in question. *Id.* Ultimately the hearing on the Becherer and O'Donnell protests was reset for September 15 through 23, 1976.

b. Relocation of the Muller Dealership.

In accordance with a prior understanding with General Motors concerning the advisability of relocation of his Chevrolet dealership, John Muller, president of appellee Muller Chevrolet, negotiated over the one-year period from December 1974 to December 1975 for the acquisition of a dealership site at 475 Foothill Boulevard in La Canada, California. Appendix 146-147. The site was secured, with General Motors' tentative approval of the relocation, in November 1975. Appendix 211.

Final approval was given by General Motors to Muller's relocation at the Foothill Boulevard site on January 16, 1975. Gilliatt deposition 45, Exh. 10. On that same date General Motors notified its existing Chevrolet franchisees and the Board of the proposed relocation as required by California Vehicle Code § 3062. Jennings Affidavit 4. Protests were filed within 15 days by Fred Bell Chevrolet, Inc. and Jack Wall Chevrolet, Inc. These protests were assigned the number PR-88-76 and PR-87-76, respectively (*Id.*) and on February 6, 1976, the Board notified General Motors of the protests and informed it that it was not to relocate the Muller dealership until a hearing had been held. Appendix 78-81.

On February 23, 1976, based upon the estimate of time supplied by General Motors' counsel, the Board tentatively set the hearing on both protests for three days in June, and on April 21, 1976, issued its notice of time and place of hearing. Jennings Affidavit 4. Prior to the scheduled hearing, however, counsel for General Motors requested that the hearing be continued, and on May 17, 1976, a stipulation was filed, continuing the hearing on both protests to August 2 through 6, 1976. Jennings Affidavit 4-5.

3. Proceedings Below.

Proceedings below were commenced by a Complaint for Declaratory Relief and Injunction, filed by appellees on April 13, 1976, alleging jurisdiction and venue in the United States District Court for the Central District of California under 28 United States

Code sections 1331(a), 1337, 1343(3), 1391(b) and 2201. Appellees sought a declaration of the alleged unconstitutionality of the Automobile Franchise Act and an injunction restraining enforcement of the Act's provisions by the New Motor Vehicle Board, the Department of Motor Vehicles, the Department's director, and their respective agents. Among the contentions advanced by plaintiffs-appellees was the allegation that the Act's procedures violated due process under the Fourteenth Amendment to the United States Constitution by "enjoining," through the orders of appellant Board, the enfranchisement of prospective dealers and the relocation of existing dealerships without opportunity for a prompt hearing and without requiring a showing of good cause prior to issuance of the administrative "injunction." Appendix 10, 12, 14-16.

A three-judge court, constituted by the Honorable Walter Ely, Circuit Judge, and the Honorable William P. Gray and the Honorable Robert M. Takasugi, District Judges, was convened pursuant to 28 U.S.C. §§ 2281 and 2284.

On May 7, 1976, defendant-appellant New Motor Vehicle Board filed a Notice of Motion to Dismiss Action, asserting that the District Court was required to abstain from the exercise of jurisdiction over the suit, under *Railroad Comm'n v. Pullman Co., supra,* 372 U.S. 496 (1941). Appendix 89-98. In support of dismissal appellants also asserted that appellees had failed to join as parties to this suit the protestants in the administrative proceedings sought to be enjoined.

Appendix 98-100. Defendant-appellant Department of Motor Vehicles and its Director filed an answer to the complaint on the same date (Appendix 101-103) and joined in appellant Board's motion to dismiss on August 13, 1976. Appendix 230-231. On or about August 4, 1976, the Northern California Motor Car Dealers Association, Inc. and the Motor Car Dealers Association of Southern California, Inc., having been permitted to intervene without opposition, filed a memorandum in support of the motion to dismiss asserting, *inter alia*, that federal abstention was additionally required herein by the doctrine of *Younger v. Harris, supra,* 401 U.S. 37 (1971) and by the principle of conservation of judicial resources. Intervenors' Memorandum in Support of Defendants' Motion to Dismiss, August 4, 1976.

On or about June 8, 1976, appellees filed a Notice of Motion for Partial Summary Judgment asserting in support thereof their contention that the Act deprived them of liberty and property without prior notice and opportunity to be heard and without a prompt hearing following the initial deprivation and therefore violated the Due Process Clause of the Fourteenth Amendment. Appendix 104-105. Appellees also asserted that the Act conflicted with the operation "and underlying economic policy" of the federal antitrust laws and was therefore invalid under the Supremacy Clause of the United States Constitution. Appendix 105.

It having been stipulated that appellants' Motion to Dismiss and appellees' Motion for Partial Summary Judgment might be heard together, a hearing on both motions was ultimately held on September 20, 1976, whereupon both motions were submitted for the decision of the Court.

The District Court denied defendants-appellants' motion to dismiss and granted plaintiffs-appellees' motion for partial summary judgment in an opinion and judgment filed on September 14, 1977.

The opinion of the Court held that the Act violated the Due Process Clause of the Fourteenth Amendment by depriving plaintiffs of liberty and property without prior notice and opportunity to be heard, and by failing to provide for a prompt hearing after the initial deprivation. The opinion rejected the Board's contention that the District Court should abstain from exercising its jurisdiction and dismiss the suit. Defendant Board noted its appeal from the judgment filed concurrently with the opinion, on October 13, 1977. Jurisd. Stmt. Exh. C. Defendants Department of Motor Vehicles and its Director noted their appeals the next day. Jurisd. Stmt. Exh. D.

Following a conference with counsel, the Court on October 18, 1977, filed a corrected judgment pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, denying the Board's motion to dismiss and granting plaintiff-appellees' motion for partial summary judgment. Jurisd. Stmt. Exh. E. Appellants Director and the Department of Motor Vehicles filed an appeal from the corrected judgment on November 17, 1977 (Jurisd. Stmt. Exh. F) and appellant Board

filed its appeal therefrom on November 21, 1977. Jurisd. Stmt. Exh. G.

4. Opinion and Judgment of the District Court.

The District Court found that the dealership establishment and relocation provisions of the California Automobile Franchise Act failed to provide for a hearing prior to the issuance of the New Motor Vehicle Board's notice informing appellee General Motors Corporation, as franchisor, that the Act required General Motors to defer consummation of its commercial ventures with appellees Fox and Muller, pending inquiry by the Board in the protest proceedings commenced against each of those proposed ventures. Believing the hearing requirements of *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and *Fuentes v. Shevin*, 407 U.S. 67 (1972) to be applicable (Opinion Below, 440 F. Supp. at 440), the District Court in its Partial Summary Judgment held that the establishment and relocation provisions of the Act deprived appellees of both liberty and property interests without prior notice and opportunity to be heard and without provision for a prompt hearing after the initial deprivation, and thus violated the Due Process Clause of the Fourteenth Amendment. (Jurisd. Stmt. Exh. E, pp. 56-67.)

SUMMARY OF ARGUMENT

A state regulatory statute is not violative of due process merely because it does not require a hearing

to be held prior to imposing delay upon consummation of privately-created business expectancies pending state inquiry in the public interest.

The District Court held that motor vehicle franchisors and their prospective franchisees possess liberty and property interests in the "right" to grant or undertake a motor vehicle dealership and the "right" to relocate their business facilities where they choose. Opinion Below 440 F. Supp. at 440. Without extended inquiry into the nature of these supported rights, the District Court, upon the basis of the requirements of notice and opportunity to be heard announced in *Sniadach v. Family Finance Corp., supra,* 395 U.S. 337 (1969) and *Fuentes v. Shevin, supra,* 407 U.S. 67 (1972), declared that California's Automobile Franchise Act violates due process of law by not providing a hearing before or while requiring franchisors and franchisees to defer consummation of their commercial ventures pending inquiry by the New Motor Vehicle Board, a statewide administrative agency of the State of California.

By invalidating and enjoining enforcement of the motor vehicle dealership establishment and relocation provisions of California's Automobile Franchise Act, the judgment of the District Court has restrained a substantively valid state regulatory program upon the basis of a supposed procedural requirement necessitated neither by the private interests affected nor by the nature of the state's alleged infringement of those interests.

The appellee franchisees and their franchisors were not deprived of either liberty or property interests by the delay imposed by the Act. Whether "the right to engage in any of the common occupations of life" (*Meyer v. Nebraska,* 262 U.S. 390, 399 (1923)) may ever constitute a protected liberty interest for purposes of procedural due process (Opinion Below, 440 F. Supp. at 440) is highly doubtful following this Court's express and longstanding recognition of the state's authority to regulate business and the professions. See *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483 (1955). The Court, however, need not determine that question here, because neither the freedom to practice one's occupation as a seller of new motor vehicles nor the freedom to do so in conjunction with any particular franchisor is sought to be regulated by the Act. To the extent that the challenged provisions of the Act relate to the right to engage in an occupation, they constitute only a limitation upon the specific geographical locations from which the prospective dealer may be permitted to operate. Because such limitations have been explicitly upheld as a valid exercise of the police power (*Lee Optical, supra,* 348 U.S. at 491) it is clear that the District Court erred in concluding that the "right" to locate business facilities where one chooses requires a hearing prior to the imposition of such a limitation by the state.

Likewise clear is the fact that the foregoing "rights" do not constitute property interests protected by due process. In *Paul v. Davis,* 424 U.S. 693 (1976)

this Court specifically recognized that both liberty *and* property rights must have their source in either state law or the Bill of Rights to be cognizable for due process purposes. 424 U.S. at 710-711. Appellees have made no assertion that their claimed interests are founded upon any provision of the Bill of Rights. California has never conferred on appellees any right to locate or relocate their business facilities at will and deprives them of no protected interest in limiting their previously unfettered freedom to do so.

Assuming, however, that appellees' interests ascend to the threshold of recognition for due process purposes, the anticipatory and hence tenuous character of those interests must relegate them to a relatively low point on the scale of interests requiring procedural protection. Cf. *Goldberg v. Kelly,* 379 U.S. 254 (1970) (public assistance benefits); *Mathews v. Eldridge,* 424 U.S. 319 (1976) (social security disability benefits); *Dixon v. Love,* 431 U.S. 105 (1977) (driver's license).

By contrast, the interest of the State is substantial and such "deprivation" of appellees' interests as may occur under the Act's procedures cannot be deemed "erroneous." *Dixon v. Love, supra,* 431 U.S. at 114. Moreover, further or additional procedures could not safeguard the interests of the franchisor or its prospective franchisee in the event of an ultimately adverse decision, and their scant utility or probable value to the franchisor would be outweighed by the burden they would create upon the administration of the regulatory scheme.

The decision of the District Court was an unnecessary constitutional adjudication *(Harrison v. N.A.A.C.P.,* 360 U.S. 167, 177 (1959)) which was required to be avoided by the doctrine of *Younger v. Harris, supra,* and the principles of *Railroad Commission v. Pullman Co., supra.* While purporting to recognize the principle of comity underlying the *Younger* doctrine, however, the District Court based its refusal to abstain from deciding this case upon a pre-*Younger* decision of this Court which had rejected *Pullman*-type abstention. Both *Younger*-type abstention and *Pullman* abstention were appropriate and, under this Court's recent decisions, were plainly required to be given application in this case.

The District Court disregarded its duty to refrain from the exercise of its equitable jurisdiction to enjoin pending state proceedings, under *Younger, supra.* At the time federal suit was commenced, there were pending before appellant New Motor Vehicle Board seven protest proceedings to which appellee General Motors was a party. Appendix 8-12. Two of these proceedings involved appellee Orrin W. Fox Co. as a newly-franchised dealer (Appendix 9-10) and two involved appellee Muller as a relocating franchisee. Appendix 11-12. A determination adverse to the interests of appellees in these cases was subject to judicial review under the California "administrative mandamus" procedure authorized under section 1094.5 of the California Code of Civil Procedure. Cal. Veh. Code § 3068. Appellee General Motors was entitled to raise in the state administrative

and judicial proceedings each and every issue subsequently asserted in this suit, and appellees' constitutional claims affecting the jurisdiction of the administrative agency to entertain the proceeding could have been asserted in the judicial review proceeding even if they were never raised before the Board. *State of California v. Superior Court (Veta Co.),* 12 Cal.3d 237, 250-251 (1974). Under these circumstances, where as here the legitimacy of the state's legislative purpose is unquestioned by the Court, the state interest in the uninterrupted administration of its legislative policies through its adjudicatory agencies and its judiciary gives rise to the requirement of *Younger, supra,* that the federal courts withhold equitable relief. *Trainor v. Hernandez,* 431 U.S. 434 (1977); *Juidice v. Vail,* 430 U.S. 327 (1977); *Huffman v. Pursue,* 420 U.S. 592 (1975).

The District Court likewise ignored settled principles of federal abstention under the doctrine of *Railroad Comm'n v. Pullman Co., supra,* in holding facially unconstitutional a state statute which had not been but was likely to be authoritatively construed in litigation currently pending in the state courts. Because exposure of the statute to state judicial scrutiny was likely to result in an interpretation which would either potentially avoid federal adjudication of the tendered claim or at least substantially modify the nature of the federal problem involved, the District Court erred in determining the federal constitutional claim advanced by appellees.

ARGUMENT

I. THE DEALER ESTABLISHMENT AND RELOCATION PROVISIONS OF CALIFORNIA'S AUTOMOBILE FRANCHISE ACT, WHICH DELAY PROPOSED BUSINESS EXPECTANCIES OF FRANCHISORS AND PROSPECTIVE FRANCHISEES PENDING STATE INQUIRY IN THE PUBLIC INTEREST, DO NOT VIOLATE DUE PROCESS OF LAW MERELY BECAUSE THEY DO NOT PROVIDE A HEARING BEFORE SUCH DELAY IS INCURRED.

A. Appellees Possessed No Protected Rights Infringed by Operation of the Act.

1. Appellees Possessed No Liberty Interest in Freedom to Engage in the Occupation of Motor Vehicle Sales. If Such an Interest Exists, the Act Does Not Attempt to Regulate That Freedom.

Though the District Court did not inquire at length into the source of the purported liberty and property interests which it held to be curtailed by the Act, the origin of those interests protected by the Due Process Clause has been recently illuminated in *Paul v. Davis,* 424 U.S. 693 (1976) in which this Court explained:

> "It is apparent from our decisions that there exists a variety of interests which are difficult of definition but are nevertheless comprehended within the meaning of either 'liberty' or 'property' as meant in the Due Process Clause. *These interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law,*[5] and we have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the State seeks to remove or significantly alter that protected status. . . .
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> * * *
>
> "[5]There are other interests, of course, protected not by virtue of their recognition by the law of a particular State but because they are guaranteed in one of the provisions of the Bill of Rights which has been 'incorporated' into the Fourteenth Amendment. Section 1983 makes a deprivation of such rights actionable independently of state law. See *Monroe v. Pape,* 365 U.S. 167 (1961)."

424 U.S. at 710-711, emphasis added.

Appellees, in their Motion for Partial Summary Judgment, had not asserted that the liberty or property of which they were allegedly deprived had been guaranteed by any provision of the Bill of Rights or recognized and protected by state law.[4] Nor did the District Court attribute appellees' perceived "rights" to either the Bill of Rights or the State.

Instead, in support of its holding that the Act deprived appellees of "liberty," the District Court apparently relied upon language employed by Mr. Justice McReynolds in this Court's decision in *Meyer v. Nebraska,* 262 U.S. 390 (1923), to the effect that the liberty guaranteed by the Due Process Clause of the Fourteenth Amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life . . ." 262 U.S. at 399. "Certainly," the District Court reasoned, "the right to

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[4]In their Motion to Dismiss filed in this Court appellees did suggest that the State, through its omission to legislate on the subject of dealership establishments and relocations prior to 1973, had conferred a right on franchisors and franchisees to locate dealerships wherever they choose. (Motion to Dismiss, p. 19, fn. 14.) This suggestion is dealt with *post,* at 32-34.

grant or undertake a Chevrolet dealership and the right to move one's business facilities from one location or another are included within this protection." (440 F. Supp. at 440.)

Whether or not this supposition by the District Court was ever justified under *Meyer,* it has been thoroughly discredited by this Court's subsequent recognition of the freedom of the State to legislate in the field of business regulation, and cannot now support the conclusion that the State is required to provide a hearing for the purpose of protecting such "rights" before insisting on deferral of their exercise pending inquiry on behalf of the public. The error of the District Court's conclusion is readily apparent once the cited language of *Meyer* and the liberty interest purportedly involved here are examined.

The first right identified by the District Court in reliance upon *Meyer, supra,* was the "right" to grant or undertake a motor vehicle dealership. In *Meyer* the Court considered a Nebraska statute which made it a criminal offense to teach the study of foreign languages to children below the level of the eighth grade. In holding that statute, along with similar statutes enacted in Ohio and Iowa *(Bartels v. Iowa,* 262 U.S. 404 (1923)), a denial of due process, the Court stated:

> "The desire of the legislature to foster a homogenous people with American ideals prepared readily to understand current discussions of civic matters is easy appreciate. . . . *But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in in time of peace and domestic tranquility has been shown."*

262 U.S. at 402, emphasis added.

"The means adopted," it is clear, were nothing less than what the Court considered to be the extinction of a professional calling:

> "Our concern is with the prohibition approved by the [Nebraska] Supreme Court. *Adams v. Tanner, supra,* [244 U.S. 590 at] p. 594, pointed out that *mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper.* No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. *We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State."*

262 U.S. at 403, emphasis and bracketed language added.

In holding unconstitutional what it conceived to be an abolition of an occupation, *Meyer* explicitly relied upon numerous previous decisions of this Court which had similarly struck down state legislation on the ground that it was "arbitrary or without reasonable

relation to some purpose within the competency of the state to effect." 262 U.S. at 400.[5]

The due process approach reflected in the rationale of *Meyer* has of course been rejected by the Court on numerous occasions. As Mr. Justice Black, speaking for the Court in *Lincoln Union v. Northwestern Co.*, 335 U.S. 525 (1949), explained:

> "This Court beginning at least as early as 1934, when the *Nebbia* case was decided, has steadily rejected the due process philosophy enunciated in the *Adair-Coppage* line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. See *Nebbia v. New York, supra* [291 U.S. 502] at 523-524, and *West Coast Hotel Co. v. Parrish, supra* [300 U.S. 379] at 392-395, and cases cited. Under this constitutional doctrine the due process clause is no longer to be so broadly construed that the Congress and state legislature are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare."

[5]Among the cases relied upon by the Court as precedent for invalidation of state legislation on these grounds were *Allgeyer v. Louisiana*, 165 U.S. 578 (1897) and *Lochner v. New York*, 198 U.S. 45 (1905); as well as *Adams v. Tanner, supra*, all of which, with others spawned by "[t]he *Allgeyer - Lochner - Adair - Coppage* constitutional doctrine" were explicitly rejected by the Court in *Lincoln Union v. Northwestern Co.*, 335 U.S. 525, 534-536 (1949).

355 U.S. at 536-537. See also, *North Dakota Pharmacy Bd. v. Snyder's Stores*, 414 U.S. 156 (1973); *Williamson v. Lee Optical of Oklahoma, supra*, 348 U.S. 483 (1955); *Semler v. Oregon State Board of Dental Examiners*, 294 U.S. 608 (1935).[6]

In 1963, this Court sustained against due process challenge a statute far more destructive of the pursuit of an occupation than even that overturned in *Meyer, supra*, in upholding a Kansas statute prohibiting all persons except lawyers from engaging in the business of debt adjusting. Holding, in *Ferguson v. Skrupa*, 372 U.S. 726 (1963), that the District Court which enjoined enforcement of the statute had erroneously "adopted the philosophy of *Adams v. Tanner* and cases like it, that it is the province of the courts to draw on their own views as to the morality, legitimacy, and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business

[6]Indeed, if *Meyer* is today persuasive of the existence of any particular freedom which the state may not arbitrarily infringe, that freedom is not the supposed right to pursue any particular vocation, but rather "the individual's freedom of choice with respect to certan basic matters of procreation, marriage and family life." (*Kelley v. Johnson*, 425 U.S. 238 (1976).) The clear suggestion of *Kelley* is that *Meyer* principally vindicated, not the freedom of the German instructor to pursue that occupation, but the right of the parents and the child to choose to learn the German language. As Mr. Justice Stewart explained in his opinion for the Court in *Runyon v. McCrary*, 427 U.S. 160 (1976):

> "In *Meyer v. Nebraska*, 262 U.S. 390, the Court held that the liberty protected by the Due Process Clause of the Fourteenth Amendment includes the right 'to acquire useful knowledge, to marry, establish a home and bring up children,' *id.*, at 399, and, concomitantly, the right to send one's children to a private school that offers specialized training—in that case, instruction in the German language. . . ."

427 U.S. at 176.

and by so doing violates due process" (372 U.S. at 729), this Court reaffirmed that "[l]egislative bodies have broad scope to experiment with economic problems" (372 U.S. at 730) and, reiterating the admonition of *Lincoln Union, supra,* confirmed its abandonment of the philosophy of *Adams*, and stated its refusal "to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.' . . ." *Ferguson, supra,* 372 U.S. at 731-732, footnote citation to *Lee Optical, supra,* and footnote reference, omitted. See, also, *North Dakota Pharmacy Bd. v. Snyder's Stores, supra,* 414 U.S. at 164-167 (1973).

It is thus quite clear that in identifying an abstract "right . . . to engage in any of the common occupations of life," under *Meyer v. Nebraska, supra,* and in holding freedom to grant or undertake a motor vehicle dealership to be a protected liberty interest comprehended by that right (440 F.Supp. at 440), the District Court necessarily ignored the teaching of numerous post-*Meyer* decisions of this Court which establish that any such "right" is subject to drastic, even prohibitory limitation by the State's police power.

Even if it were assumed that *Meyer* today continues to stand for the existence of some protected right to engage in an occupation, that proposition is not offended by the establishment or relocation provisions of the Act, for if the "right" to grant or undertake a

dealership for General Motors vehicles constitutes the liberty to engage in a lawful occupation, as the District Court declared (Opinion Below, 440 F. Supp. at 440), that liberty is utterly unaffected by the present Act. Nothing in the Act seeks to control or direct General Motors' discretion as to whom it will or will not franchise as a dealer, and likewise, no person is either compelled to enter, or prohibited from entering, into such a business relationship with General Motors or any other franchisor. Moreover, the procedural provisions challenged in this suit have nothing to do with whether or not a particular person may or may not become a motor vehicle dealer under California law. To be sure, California has for years licensed motor vehicle dealers and requires licensure of all who pursue that occupation (see Appendix 162-164) and the authority of the state to do so has neither been challenged by the appellees nor questioned by the District Court. Entry into the occupation through licensure does not depend upon the geographical location of the dealership. Conversely, the applicability of the Act's provisions to a prospective enfranchisement or relocation is in no manner dependent upon the identity or the status of the prospective franchisee as a licensee of the state, but arises by the terms of the Act, "[i]n the event that a franchisor seeks to enter into a franchise establishing . . . or relocating [a] motor vehicle dealership within or into a relevant market area where the same line-make is then represented . . ." Cal. Veh. Code § 3062. Thus, assuming that *Meyer* might require due process protection against refusal or

deprivation of the freedom to pursue a particular occupation, the District Court erred in concluding that such freedom is infringed by the Act.

2. Appellees Had No Liberty or Property Interest in Previously-Unrestrained Freedom to Locate Their Facilities Where They Wished.

The second "liberty interest" discerned by the District Court under *Meyer* was "the right to move one's business facilities from one location to another." Opinion Below, 440 F. Supp. at 440.

If such a "right" exists, *Meyer* lends no support to its recognition, because even if due process might preclude the state from utterly prohibiting the practice of a profession or the pursuit of an occupation, there is *no* constitutional guarantee of freedom from regulation of such profession or occupation under the State's police power. Compare *Adams v. Tanner, supra,* and *Olson v. Nebraska,* 313 U.S. 236 (1941). Only such a freedom, if it existed, could support the District Court's holding that appellees had a right to relocate their facilities wherever they might choose.

Entirely apart from the wholly legitimate adumbration of one's freedom to do business by such prevalent, routine and long-recognized restrictions on place and manner as are presented by municipal zoning law, for example (see *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)), the power of the state to enact restrictions on the geographical placement of one's occupational or professional facilities has been considered and sustained against due process challenge by this Court at least as long ago as the

decision in *Williamson v. Lee Optical of Oklahoma, supra,* 348 U.S. 483, 490-491 (1955). In *Lee Optical, supra,* upholding an Oklahoma statute which in part prohibited the occupancy of retail store space by persons "purporting to do eye examinations or visual care" (348 U.S. at 491), the Court noted that "[g]eographical location may be an important consideration in a legislative program which aims to raise the treatment of the human eye to a strictly professional level. We cannot say that the regulation has no rational relation to that objective and therefore is beyond constitutional bounds." 348 U.S. at 491. *Lee Optical* thus belies the existence of any "right" to locate or relocate a business, protected by the Due Process Clause from interference by the State.

In *Paul v. Davis, supra,* 424 U.S. 693 (1976), this Court made it clear that the procedural due process claimant must look either to state law or the provisions of the Bill of Rights to determine whether he is possessed of liberty or property within the meaning of the Due Process Clause. 424 U.S. at 710-77. Appellees have not asserted that they have been deprived of liberty or property protected against interference by the Bill of Rights. The question, then, is whether California law has created or recognized the liberty or property interest for which appellees contend.

As noted *ante*, because the District Court merely assumed that the freedom to grant or undertake a dealership and the freedom to relocate one's facilities

were comprehended by the right to engage in an occupation under *Meyer, supra,* it apparently did not deem it necessary to determine whether California had ever created or recognized either a liberty or a property interest in those particular freedoms. Quite clearly, California had not.

Appellants pointed out to the District Court (Appendix 162-166) and subsequently to this Court (Jurisd. Stmt. p. 5, fn. 1) that California's regulation of the motor vehicle marketing business has grown by increments since 1923. In 1957 the state required dealers to be licensed (Cal. Veh. Code, § 200) and in 1967 this requirement was extended to manufacturers. Cal. Stats. 1967, ch. 5, § 2; Veh. Code, § 11700. The requirements set forth in the Automobile Franchise Act, applicable to establishment and relocation of dealerships, were enacted in 1973.

It is true that the particular aspects of the franchisor-franchisee relationship governed by the Act were unregulated by the State prior to 1973. This circumstance, of course, resulted in no state-conferred grant of any right to establish or relocate dealership wherever the franchisor and franchisee chose. Indeed, if the absence of prior regulation of the geographical placement of such dealerships ipso facto conferred a protectable right on appellees, then no state could ever legislate to fill a prior regulatory void without interfering with "protected liberty or property interests," because in every case the freedom consisting in the prior absence of regulation of the

activity in question would itself disappear when the state eventually acted.[7]

This Court, moreover, has repeatedly recognized that, unlike certain liberty interests,

> "[p]roperty interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure benefits and that support claims of entitlement to those benefits . . ."

Board of Regents v. Roth, 408 U.S. 564, 577 (1972); *Paul v. Davis, supra,* 424 U.S. 693, 709 (1976).

There is no allegation in appellees' complaint, much less any showing in the record, that the conditions for creation of a property interest, either by rules of the state or those understandings referred to in *Roth, supra,* are present here.[8] Accordingly the limitation expressed in this Court's admonition that "[t]he Fourteenth Amendment's procedural protection of property is a safeguard of the security of *interests*

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[7]The Act's establishment and relocation provisions, by their terms, create no burdens upon continued operation of franchisors and franchisees at existing dealership locations, and thus do not present a case of interference with liberty or property interests of persons established as dealers prior to the effective date of the legislation.

[8]Appellees' complaint pleaded a claim under the rubric "Impairment of Contracts" (Appendix 21-22) which was *not* addressed to the establishment and relocation provisions of the Act affected by the Partial Summary Judgment, but rather to the separate provisions pertaining to terminations of franchises (Cal. Veh. Code §§ 3060, 3061) which the District Court did not consider.

that a person has already acquired in specific benefits," (*Roth, supra,* 408 U.S. at 576, emphasis added) renders the hearing requirements of due process inapplicable here.

B. Assuming That the Claimed Rights of Appellees Rise to the Threshold of Recognized Interests Protected by the Due Process Clause, the Establishment and Relocation Procedures of the Act Satisfy the Requirements of Due Process.

1. Mathews v. Eldridge, 424 U.S. 319 (1976) Identifies the Determinants of What Process Is Due When State Action Constitutes a Deprivation of a Protected Liberty or Property Interest.

Assuming that appellees possessed either a liberty or a property interest in an unrestrained ability to locate or relocate their business facilities wherever they chose, the provisions of the Act which affect those abilities comport with the requirements of procedural due process as identified by this Court.

Once a protected liberty or property interest is implicated, the second part of "the familiar two-stage analysis" requires a determination what procedures constitute due process of law. (*Ingraham v. Wright,* 430 U.S. 651, 672 (1977).) The elements of the inquiry in this second stage were articulated in *Mathews v. Eldridge, supra*:

> ". . . [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's

> interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. . . ."

424 U.S. at 335. See *Dixon v. Love,* 431 U.S. 105, 112 (1977).

2. Appellees' Interest in Prospective Establishment or Relocation of Their Business Ventures at a Particular Location, if Within the Protection of the Due Process Clause, Is Low on the Scale of Interests So Protected.

The private interest affected by the State's action herein, however characterized, consists in the prospective establishment or relocation of appellees' proposed business ventures at a particular geographical location. Assuming that this interest does require the protection of procedural due process, the initial inquiry, for purposes of deciding what process is due, is where that particular private interest ranks in the hierarchy of interests so protected.

In *Mathews v. Eldridge, supra,* this Court pointed out that only in *Goldberg v. Kelly, supra,* had the Court required an evidentiary hearing to precede a temporary deprivation. 424 U.S. at 340. In distinguishing between the interruptions of welfare payments involved in *Goldberg,* which had required a prior evidentiary hearing, and the discontinuation of Social Security disability benefits payments at issue in *Eldridge,* the Court emphasized that *Goldberg* had involved discontinuation of welfare assistance "given to persons on the very margin of subsistence." 424 U.S. at 340. By contrast, the Court explained, "though the hardship imposed upon the erroneously terminated

disability recipient may be significant," there was "less reason here than in *Goldberg* to depart from the ordinary principle, established by our decisions, that something less than an evidentiary hearing is sufficient prior to adverse administrative action." (424 U.S. at 342-343.)

Last term, in *Dixon v. Love*, 431 U.S. 105 (1977), the Court considered the requirements of due process applicable to a deprivation of the property interest in a driver's license. Observing that "[u]nlike the social security recipients in *Eldridge,* who could at least obtain retroactive payments if their claims were subsequently sustained, a licensee is not made entirely whole if his suspension or revocation is later vacated" (431 U.S. at 113), the Court, on the basis of all considerations relevant under *Mathews, supra,* upheld an Illinois statute authorizing revocation of a driver's license without a prior hearing upon the occurrence of a third conviction of a moving violation.

By contrast with the driver's license involved in *Dixon*, which this Court had previously recognized as an "important interest" in *Bell v. Burson*, 402 U.S. 535, 539 (1971), appellees' interest in consummation of their business endeavors must be held to be neither so vital nor so essential as to require a hearing where *Dixon* did not.[9] First, at the time the provisions of

[9] *Dixon* held that the driver's license in turn "may not be so vital and essential as are social insurance payments on which the recipient may depend for his very subsistence," citing *Goldberg, supra,* 397 U.S. at 264. *Dixon, supra,* 431 U.S. at 113. See *Eldridge, supra,* 424 U.S. at 343.

the Act initially become applicable by their terms, affected business expectancies will not yet have reached fruition; indeed, if they have, then the franchisor itself has delayed too long in complying with the Act. Just how close to realization the affected plans are when and if delayed depends entirely upon the franchisor, who, under the unconstrued language of California Vehicle Code section 3062, has unfettered discretion to decide when to make its notifications to its franchisees and the Board, and thus activate that section's procedural provisions. Second, since the private contractual basis underlying the affected business expectancies includes and incorporates the Act's provisions affecting the contract's validity, construction, discharge and enforcement (*Home Bldg. & L. Assn. v. Blaisdell*, 290 U.S. 398, 429-430 (1934)), the contractual interest of the parties is itself limited by the presumptive knowledge of all concerned that that interest is subject to deferral and even to ultimate denial by the State. See Cal. Veh. Code, §§ 3062, 3063.

3. The Temporary Deprivation of Appellees' Interest by Necessary Delay Under the Act Cannot Be "Erroneous", as That Term Has Been Limited by Dixon v. Love, 431 U.S. 105 (1977), and Additional Procedural Safeguards Are Unnecessary.

The interest asserted by appellees, as it exists at the time the Act's provisions commence to apply, is entirely subject to defeasance by subsequent state action, and unless no protest is filed, remains so until final action by the Board. In *Dixon v. Love, supra,* the Court rejected a claim that, because a driver

might *ultimately* establish eligibility for relief from license revocation or suspension, a prior hearing would avoid erroneous deprivation when such an entitlement existed. The Court held that because the statute contemplated relief only after the initial deprivation was authorized, "[a]n initial suspension or revocation, therefore, is not 'erroneous' even if the licensee subsequently qualifies for relief." (431 U.S. at 114, fn. 10.) In like fashion the franchisor under the Act may well ultimately be found to be entitled to establish or relocate its dealership because the burden of demonstrating good cause not to allow the proposed action has not been met; but the fact that the franchisor's plans may ultimately prevail does not render the statutorily-imposed delay "erroneous" any more than the initial deprivation of the protected-interest was rendered "erroneous" by the potential establishment of eligibility for relief from revocation. (*Dixon, supra,* 431 U.S. at 114.)

The reasons underlying the conclusion that a deprivation of the asserted interest cannot be erroneous under these circumstances would terminate the due process inquiry under the view of the Court's action in *Dixon, supra,* expressed in the separate concurring opinion of Mr. Justice Stevens, joined by Mr. Justice Marshall (431 U.S. at 116-117) and of Mr. Justice Brennan, concurring in the result (431 U.S. at 117-118). These Members of the Court were of the opinion that *Dixon* held a temporary deprivation of an existing property interest not to require a prior hearing where specified factual circumstances made

the deprivation mandatory under a valid state regulation. 432 U.S. at 117. The operation of the Act's establishment and relocation provisions falls squarely within the *Dixon* holding, as thus understood. The validity of the substantive exercise of the state's police power upon dealer establishment and relocation is unquestioned by the District Court's opinion and cannot be doubted after *Williamson v. Lee Optical of Oklahoma, supra.* It is, of course, this exercise of the police power which results in the highly tentative character of the interest asserted by appellees. The statutory procedure for effectuation of the regulatory inquiry mechanism, i.e., temporary deferral of consumation of the establishment or relocation, is mandatory under the Act when (1) the franchisor seeks to enter into a franchise establishing or relocating a dealership, (2) the franchisor gives notice of its intentions to the Board and existing franchisees, and (3) a protest is filed with the Board. (Cal. Veh. Code, §3062.) Once these conditions are fulfilled, their existence is indisputable, and therefore a hearing on whether or not the statutory delay is applicable would be of no utility. (Cf. *Dixon,* 431 U.S. at 113-114.) *Dixon's* holding that a state's mandatory deprivation of even a concededly-important, previously-conferred interest (*Bell v. Burson, supra,* 402 U.S. at 539) does not raise a requirement of a prior hearing applies *a fortiori* where the interest involved is prospective rather than extant, is in the nature of an expectancy rather than a right, and is exclusively the creature of privately-held anticipa-

tions rather than a grant, or a rule or explicit understanding, established by the State.

Even if the Act's necessitation of deferral of commercial expectancies is not held to be included within the class of procedures which may be upheld as a mandatory result of a valid regulation, the procedures specified by the Act minimize the likelihood that an erroneous deprivation will result from delay. Unlike the licensee in *Dixon,* the franchisor under the Act need request no hearing to vindicate its interest. The hearing is required by the Act. Cf. *Dixon,* 431 U.S. at 109-110. The franchisor bears no burden of persuasion at the hearing. Cal. Veh. Code, § 3066(b); cf. *Dixon,* 431 U.S. at 110. The hearing itself must be held within 60 days from the date it is noticed (Cal. Veh. Code, § 3066(a)) and, except under specified circumstances, the Board must act upon the case within 30 days after it hears the protest or, if the case has been heard by a hearing officer, within 30 days after the proposed decision is received. Delay beyond the prescribed period results in approval of the franchisor's proposed action. Cal. Veh. Code, § 3067.[10]

Under these circumstances it must be concluded that the probable value of substitute or additional procedures would be slight. For the reasons discussed

[10]In the administrative proceedings involving appellee Muiler, the Board did not act upon the hearing officer's proposed decision within the 30 day period prescribed by Section 3067, and the Muller relocation was accordingly deemed approved. Appellant's Application for Order Staying Judgment, Exhibit E, p. 5.

post, at 42-43, acceleration of the hearing on the merits of a protest to a time prior to occurrence of any delay to the proposed action is particularly undesirable. Moreover, the futility of requiring a preliminary hearing at which the franchisor might initially prevail, only to be later required to surrender its further-advanced plans and the plans of its proposed franchisee, should the Board finally disapprove the proposed action, must be manifest. No justification for such further procedures is discernible.

4. The Interest of the State Is Substantial, and in Light of This Interest, the Burdens Imposed by a Requirement of Substitute or Additional Procedures Cannot Be Justified.

The importance of the State interest embodied in the establishment and relocation provisions of the Act has been made explicit by the legislature of California in the declaration of purpose which attended the Act's passage. The legislature declared:

> "[T]he distribution and sale of new motor vehicles in the State of California vitally affects the general economy of the state and the public welfare and . . . in order to promote the public welfare and in the exercise of its police power, it is necessary to regulate and to license vehicle dealers, manufacturers, manufacturer branches, distributors, distributor branches, and representatives of vehicle manufacturers and distributors doing business in California in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor and to insure that dealers fulfill their obligations under their franchises and provide

adequate and sufficient service to consumers generally." Cal. Stats. 1973, ch. 996, § 1. Appendix 165-166.

The elements of the regulatory concern of the State in the establishment and relocation of franchised motor vehicle dealerships are, moreover, specifically identified by the Act as including the questions of the effect the new dealership will have "on the retail motor vehicle business and the consuming public in the relevant market area" (Cal. Veh. Code, § 3063(2)), "[w]hether it is injurious to the public welfare for an additional franchise to be established" (Cal. Veh. Code, § 3063(3), "[w]hether the purchasees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area . . ." (Cal. Veh. Code § 3063(4) and "[w]hether the establishment of an additional franchise would increase competition and therefore be in the public interest" (Cal. Veh. Code § 3063(5).) Indeed, under California Vehicle Code §3063, these are the issues which the Board must determine in its inquiry into the possible existence of good cause not to permit the proposed action.

Quite obviously, the resolution of these concerns by any form of fact-finding process requires the State to take the time to inquire with some particularity into frequently complex economic circumstances and relationships which will not always lend themselves to easy analysis. Some indication of the time commitment required for the inquiry is supplied by the

fact that in the proceedings upon the Muller relocation, General Motors' counsel estimated a need for three days, later increased to five. See *ante,* at 12.

Imposition of a requirement that this inquiry, perhaps in truncated or abbreviated form, be performed in haste, so as not to delay commercial expectancies when the Act's provisions apply, would obviously impose a burden of substantial dimensions on the State's regulatory machinery while diminishing the deliberate thoroughness which the legislature has determined is necessary to the inquiry. Such a requirement would be particularly unreasonable in light of the fact that the Act's mandatory inhibition upon the proposed action, pending inquiry, operates to maintain the status quo while the State itself takes the time to perform the police function in a responsible manner, and thus serves to minimize the potential economic consequences of a decision adverse to the proposed action.

The importance of the State's interest in the issues which attend establishment and relocation of franchised motor vehicle dealerships is simply too great to permit substitution of any less deliberate or complete inquiry for that supplied by the present adjudicatory procedures; and imposition of additional procedures such as a preliminary hearing held prior to subjecting proposed actions to delay pending full inquiry, would neither serve the purpose of the Act nor ultimately benefit the private interests involved.

The three-pronged due process inquiry required by *Eldridge* thus discloses, first, a private interest

of minimal stature consisting in an expectation of participation in an industry substantively regulated by the State; second, state-created procedures which, though they require deferral of realization of business aspirations pending inquiry, include reasonable safeguards for avoidance of undue delay and for protection of the affected franchisor and potential franchisee against aggravation of economic hardship pending inquiry; and third, an articulated State interest in the regulation of the affected industry, which would be ill served by either substitute procedures requiring the responsible administrative agency to perform its functions in haste, or by additional procedures of questionable benefit to the affected private interest. Under these circumstances, it must be concluded that the Due Process Clause does not require greater procedural safeguards than the Automobile Franchise Act affords.

II. THE DISTRICT COURT WAS REQUIRED TO ABSTAIN FROM THE EXERCISE OF JURISDICTION HEREIN

A. The District Court Was Required by the Doctrine of Younger v. Harris, 401 U.S. 37 (1971) to Withhold Relief and Dismiss the Suit.

1. Abstention Was Required in the Present Case Under This Court's Recently Articulated Rules for the Application of the Younger Doctrine.

The complaint filed in the District Court on April 13, 1976, explicitly identified a total of seven adjudicatory proceedings to which appellee General Motors was a party before the New Motor Vehicle Board.

Two such proceedings involved the proposed relocation of appellee Muller (Appendix 11-12), and two involved the proposed establishment of appellee Fox as a dealer. Appendix 9-10. It was these proceedings, together with all other then pending before the Board, which the District Court was called upon to enjoin by appellee's prayer that appellants be restrained "from taking any action to implement or enforce the provisions of the Automobile Franchise Act." Appendix 25. Had any of these proceedings resulted in a decision adverse to the interests of any appellee, judicial review thereof would have been available through the California prerogative writ procedure for "administrative mandamus"[11] under section 1094.5 of the California Code of Civil Procedure.[12] See Cal. Veh. Code, § 3067.

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[11]A constitutional issue similar to one raised by the present complaint, but not asserted as a ground for summary judgment and thus never considered by the District Court, was decided by California courts through this very procedure while this case was under submission to the District Court. In *American Motors Sales Corp. v. New Motor Vehicle Board,* 69 Cal.App.3d 983 (decided May 23, 1977) the Court of Appeal for the Third Appellate District affirmed a superior court judgment granting a writ of mandamus, holding that the presence of four new car dealers on the nine-member Board denied due process to manufacturers when the Board adjudicated protests against franchise terminations. Cal. Veh. Code § 3060.

[12]California Code of Civil Procedure section 1094.5 provides in relevant part:

> "(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board or officer may be filed

In *Trainor v. Hernandez, supra,* 431 U.S. 434 (1977), Mr. Justice White for the Court observed:

with the petition, may be filed with respondent's points and authorities or may be ordered to be filed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, such expense shall be taxable as costs.

"(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

"(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence; and in all other cases abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

"(d) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (e) of this section remanding the case to be reconsidered in the light of such evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit such evidence at the hearing on the writ without remanding the case.

"(e) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

"(f) Except as provided in subdivision (g), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration

"Because our federal and state legal systems have overlapping jurisdiction and responsibilities, we have frequently inquired into the proper role of a federal court, in a case pending before it and otherwise within its jurisdiction, when litigation between the same parties and raising the same issues is or apparently soon will be pending in a state court. . . .

"*Younger v. Harris, supra,* and *Samuels v. Mackell,* 401 U.S. 66 (1971), addressed these questions where the already pending state proceeding was a criminal prosecution and the federal plaintiff sought to invalidate the statute under which the state prosecution was brought.

of the time for filing such notice, whichever occurs first; provided that no such stay shall be imposed or continued if the court is satisfied that it is against the public interest; provided that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which such appeal is taken; provided that, in cases where a stay is in effect at the time of filing the notice of appeal, such stay shall be continued by operation of law for a period of twenty (20) days from the filing of such notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which such appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of such proceedings.

"(g) . . ."

(Subdivision (g) pertains to stays of the operation of administrative decisions or orders of agencies licensing persons under the Business and Professions Code only.)

> In these circumstances, the Court ruled that the Federal District Court should issue neither a declaratory judgment nor an injunction but should dismiss the case. . . ."

431 U.S. at 440.

Noting that a first justification of this holding lay in the rule that courts of equity particularly should not restrain a criminal prosecution, the Court in *Trainor* then addressed what it ultimately affirmed as "the 'more vital consideration' underlying the *Younger* doctrine" (431 U.S. at 443), explaining:

> "Beyond the accepted rule that equity will ordinarily not enjoin the prosecution of crime, however, the Court voiced a 'more vital consideration.' 401 U.S., at 44, namely, that in a union where both the States and the Federal Government are sovereign entities, there are basic concerns of federalism which counsel against interference by federal courts, through injunctions or otherwise, with legitimate state functions, particularly with the operation of state courts. Relying on cases that declared that courts of equity should give 'scrupulous regard [to] the rightful independence of state governments,' *Beal v. Missouri Pacific R. Co.*, 312 U.S. 45, 50 (1941), the Court held, that in this intergovernmental context, the two classic preconditions for the exercise of equity jurisdiction assumed new dimensions. Although the existence of an adequate remedy at law barring equitable relief normally would be determined by inquiring into the remedies available in the federal rather than in the state courts, *Great Lakes Co. v. Huffman*, 319 U.S. 293, 297 (1943), here the inquiry was to

> be broadened to focus on the remedies available in the pending state proceeding. '"The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection."' *Younger v. Harris*, 401 U.S., at 45, quoting *Fenner v. Boykin*, 271 U.S. 240, 243-244 (1926). Dismissal of the federal suit 'naturally presupposes the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved.' *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973). 'The policy of equitable restraint . . . is founded on the premise that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.' *Kugler v. Helfant*, 421 U.S. 117, 124 (1975.)"

431 U.S. at 441.

The Court in *Trainor* noted that, relying upon the "more vital consideration" of comity, it had since applied the rule of *Younger* to bar issuance of an injunction against a state court suit brought by the state to enforce a nuisance statute in *Huffman v. Pursue, Ltd., supra,* 420 U.S. 592 (1975) and to bar interference with state judicial contempt proceedings, in *Juidice v. Vail, supra,* 430 U.S. 327 (1977). Holding these cases controlling, the Court in *Hernandez* required absention from exercise of the federal injunctive power against the state's recovery of public assistance payments through its judicial attachment procedures, and observed:

"The state action was a suit by the State to recover from appellees welfare payments that allegedly had been fraudulently obtained. The writ of attachment issued as part of that action. . . . Both the suit and the accompanying writ of attachment were brought to vindicate important state policies such as safeguarding the fiscal integrity of those programs. The state authorities also had the option of vindicating these policies through criminal prosecutions. See *supra*, at 435. Although, as in *Juidice*, the State's interest here is '[p]erhaps . . . not quite as important as is the State's interest in the enforcement of its criminal laws . . . or even its interest in the maintenance of a quasi-criminal proceeding . . . .' 430 U.S., at 335, the principles of *Younger* and *Huffman* are broad enough to apply to interference by a federal court with an ongoing civil enforcement action such as this, brought by the State in its sovereign capacity."

431 U.S. at 444, footnote and footnote reference omitted.

The Court's decision in *Hernandez* reaffirms the teaching of *Huffman, supra,* and *Juidice, supra,* that it is the importance of the State's interest involved in the proceedings sought to be enjoined, which invokes the principles of comity requiring abstention under the *Younger* doctrine. The importance of the State's interest in proceedings before appellant Board consists in California's very ability to regulate the number and geographical placement of new motor vehicle dealerships, in the public interest. See *ante*, at 41-42.

This concern, as Mr. Justice Rehnquist pointed out in his opinion granting a stay of the District Court's judgment herein, "has prompted at least 17 other States to enact statutes which prescribe conditions under which new or additional dealerships may be permitted in the territory of the existing dealership . . ." *New Motor Vehicle Board v. Orrin W. Fox Co.*, ... U.S. .....; 54 L.Ed. 439, 444; 98 S.Ct. 359, 363 (1977). As was brought to the attention of the District Court, at least eight jurisdictions in addition to California have established commissions having authority to make adjudicative inquiry into the existence of the requisite conditions. Appendix 164.

2. Failure to Abstain Under Younger in the Present Case Both Prevents California From Effectuating Substantive Policies and Pretermits Performance of the Function of Providing State Forum for Vindication of Constitutional Objections Thereto.

The District Court expressed no doubt as to the substantiality of the state's interest in the effective regulation of the number and placement of new motor vehicle dealerships. Yet, despite the unquestioned validity of California's interest as a regulator, the District Court, by enjoining ongoing proceedings along with all enforcement of the Act's provisions, deprived the State of the very means to perform the regulatory function. The issuance of the District Court's injunction in the present case is thus paradignatic of the evils which this Court's application of the *Younger* doctrine has sought to avoid. As the Court stated in *Trainor, supra:*

"[T]o restrain a state proceeding that afforded an adequate vehicle for vindicating the federal

plaintiff's constitutional rights 'would entail an unseemly failure to give effect to the principle that state courts have the solemn responsibility equally with the federal courts' to safeguard constitutional rights and would 'reflec[t] negatively upon the state court's ability' to do so. *Steffel v. Thompson*, 415 U.S. 452, 460-461, 462 (1974). The State would be prevented not only from 'effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies.' *Huffman v. Pursue, Ltd.*, 420 U.S. at 604."

431 U.S. at 443.

More concretely, the present case substantiates this Court's concern that whether the procedure enjoined is "labeled civil, quasi-criminal, or criminal in nature," federal court interference can be " 'an offense to the State's interest . . . likely to be every bit as great as it would be were this a criminal proceeding,' . . ." (*Juidice, supra,* 430 U.S. at 336.)Just how great an offense has occurred in the present case was accurately summarized by Mr. Justice Rehnquist in his opinion on appellants' application for stay:

". . . The interest of the State does not necessarily find expression through disapproval of relocation plans, but rather through the act of examining the proposed relocations to make sure that existing dealers are not being impermissibly harmed by the manufacturer and that the move is otherwise in the public interest. This interest is infringed by the very fact that the State is prevented from engaging in investigation and

examination. And the occasion for this review may arise often during the time this injunction is in effect. In an affidavit presented to the District Court, Sam W. Jennings, Executive Secretary of the New Motor Vehicle Board, indicated that in the first 44 days following the issuance of the District Court's injunction, the Board received 99 notices of intent to relocate or establish new dealerships in California. Under the terms of the injunction, all those applicants will be allowed to locate dealerships without undergoing any scrutiny by the State. And assuming the State eventually prevails on the merits and the injunction is lifted, it is not at all clear that the New Motor Vehicle Board will have the authority to examine the propriety of all those relocations or to force those relocated dealerships to stop doing business."

..... U.S. at .....; 54 L.Ed.2d at 445, 98 S.Ct. at 363.

That the District Court's injunction in this case is aimed at the very ability of the State to serve its regulatory purposes underscores the fact that this is precisely the form of interruption which, under *Younger*, can and does "unduly interfere with the legitimate activities of the States," 401 U.S. at 44. See *Juidice, supra,* 430 U.S. at 335-336. Indeed, whereas in *Trainor, supra,* this Court preserved the Illinois attachment procedure from the lower court's injunction largely because it was utilized by the State at its own option to execute its programs (*Id.*, 431 U.S. at 444), in the present case the need for abstention does not depend upon any arguably adventitious interest of the State in the particular

proceeding enjoined. Here the interest of the State is inherent in the creation and the ongoing operation of the challenged procedures themselves. But for that interest, the challenged procedures would not exist; and but for the existence of those procedures the State's interest has no means of vindication.

The District Court's injunction against operation of the Act's procedures was particularly unjustified in light of the fact that the remedies available to appellees in the pending state proceedings included adjudication of every issue tendered for decision by the complaint in this suit. The four adjudicatory proceedings involving the three appellees in this suit provided an administrative and a judicial state forum for appellee's present challenges to the Act. In the event of a Board decision adverse to appellee's interests, the "administrative mandamus" procedure authorized by Code of Civil Procedure section 1094.5 (see *ante* at pp. 45-47) could have been invoked up to 45 days following the Board's order. Cal. Veh. Code § 3068. In that proceeding General Motors would have been entitled to the state superior court's review of all legal issues determined by the Board, as well as a determination of constitutional issues affecting the jurisdiction of the Board, even if such issues had not been raised before the Board in its own proceedings *State of California v. Superior Court (Veta Co.)*, 12 Cal.3d 237, 250-251 (1974). Moreover, General Motors' remedies included an action for declaratory relief in addition to a proceeding under the "administrative mandamus" statute, insofar as General Motors challenged the Act as facially unconstitutional, as it did in the District Court. 12 Cal.3d at 251. Under California law, declaratory relief actions are required to be granted precedence for trial. (Cal. Code of Civil Procedure, § 1062a.) Thus, as the Court observed in *Juidice, supra,* "it is abundantly clear that appellees had an *opportunity* to present their federal claims in the state proceedings. No more is required to involve *Younger* abstention." (*Juidice, supra*, 430 U.S. at 337, emphasis by the Court, footnote and footnote reference omitted.)

Application of *Younger* here is, therefore, plainly indicated by exactly those concerns which compelled the result in *Huffman, supra,* in *Juidice, supra,* and in *Trainor, supra* in order to give effect to that "more vital consideration" underlying *Younger.*

3. Neither the Fact That the State Adjudicatory Proceedings Sought to be Enjoined Were Initially Administrative, Nor the Fact That Private Interests Opposed Those of Appellees in Those Proceedings Should Deter Application of Younger to the Present Case.

The appropriateness of abstention under *Younger* is by no means diminished by the fact that the proceedings sought to be enjoined herein were administrative in their origin, rather than original judicial proceedings. Indeed, in *Huffman v. Pursue Ltd., supra,* the Court observed that the standards of restraint which ultimately required abstention in that case grew from recognition of the seriousness of federal judicial interference with state civil functions *per se*, and, by way of example of this recognition, referred specifically to the opinion of Mr. Justice

Holmes in *Massachusetts State Grange v. Benton*, 272 U.S. 525 (1926):

> "Writing for the Court, Mr. Justice Holmes cited *Fenner v. Boykin, supra* [271 U.S. 240 (1925)], and emphasized a rule that 'should be very strictly observed,' 272 U.S., at 529, 'that no injunction ought to issue against officers of a State clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury.' *Id.*, at 527."

420 U.S. at 603.

The Court in *Huffman* explicitly noted that the bill considered by Mr. Justice Holmes sought an injunction not against judicial proceedings, but against state executive officers. 420 U.S. at 603-604. Even if the distinction between judicial and executive functions were otherwise significant for purposes of *Younger* abstention, any such distinction between the adjudicatory authority exercised by an administrative agency such as the Board and the judicial power exercised by the California courts in reviewing agency decisions is functionally immaterial to appellees *"opportunity* to present their federal claims in the state proceeding" (*Juidice, supra,* 430 U.S. at 337)[13] which

[13]As discussed *ante,* the California litigant has available an expedited declaratory relief procedure to challenge a statute claimed to be void on its face and a statutory prerogative writ procedure in which all claims raised before the agency can be relitigated and constitutional claims affecting the agency's jurisdiction may be litigated even if not previously raised. In addition, the statutory review procedure requires the superior court to weigh the evidence either under the standard of *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951) (see *Bixby v. Pierno,* 4 Cal.3d 130, 143 (1971)) or under the independent judgment standard authorized by California Code of Civil Procedure section 1094.5, subdivision (c). Thus the reviewing court in all cases weighs the evidence before the agency, in some cases reweighs the evidence *de novo,* is never foreclosed by agency action consideration of constitutional issues, and is authorized to hear and determine constitutional issues affecting fundamental jurisdiction even if they were never raised before the agency.

the Court has held to be all that is required to invoke *Younger* abstention. *(Id.,* at 337.)

Similarly ineffectual to deter application of *Younger* here is the fact that private interests of existing new motor vehicle dealers may invoke the state proceeding in aid of the regulatory function. Similar circumstances were present and acknowledged in the contempt proceedings in *Juidice, supra,* of which the Court specifically noted, "Contempt in these cases, serves, of course, to vindicate and preserve the private interests of competing litigants, *People ex rel. Munsell v. Court of Oyer and Terminer,* 101 N.Y. 245, 247-259, 4 N.E. 259, 259-261 (1886), *but its purpose is by no means spent upon purely private concerns."* (430 U.S. at 336, fn. 12; emphasis added.) So, here, it is the effectuation of California's substantive policies, not the circumstances from which the policies are served, upon which the purposeful application of *Younger* depends.

4. Neither of the Exceptions to Applicability of the Younger Doctrine Are Present in the Instant Case.

In *Juidice v. Vail,* this Court stated:

> "We noted in *Huffman* that *Younger* principles do not apply, even where otherwise applicable.
>
> 'in those cases where the District Court properly finds that the state proceeding is moti-

> vated by a desire to harass or is conducted in bad faith, or where the challenged statute is " 'flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.' " ' *Huffman,* 420 U.S., at 611."

430 U.S., at 338.

As in *Juidice, supra,* no facts bringing the present case within one or the other of these "narrow exceptions" *(Huffman, supra,* at 611) were alleged, proved or found. (See *Juidice, supra,* at 338). Indeed, nothing in the complaint (Appendix 1-81), appellees' affidavits in support of their motion for summary judgment (Appendix 143-158) or their argument in support of that motion (Appendix 107-136) suggests that the State *or any other party* involved in the Board's proceedings acted in bad faith or for the purpose of harassment. (Cf. *Juidice, supra,* at 338).

Nor is the present case one in which the trial court has found the State statute "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *(Younger, supra,* at 53-54; see *Trainor, supra,* at 446-447; *Huffman, supra,* at 610.)

Neither of the recognized exceptions to the rule of applicability of *Younger* exists in this case. Accordingly, in light of the importance of the state's interest represented in the proceedings sought to be enjoined, the extent of the interference worked by an

injunction against the Act's procedures, and the availability of the opportunity to vindicate appellees' constitutional claims through the California judiciary, the District Court was required to withhold the exercise of its jurisdiction and dismiss the suit.

B. The District Court Was Required to Decline to Exercise Jurisdiction Under the Principles of Railroad Commission v. Pullman Co., 312 U.S. 496 (1941).

1. The Doctrine of Abstention Under Pullman Is Applicable Where, As Here, There Exist for Resolution by the State Courts Issues Which Would Render the Exercise of Federal Jurisdiction Unnecessary or Significantly Modify the Federal Claim.

The District Court erred in refusing to abstain from the exercise of its jurisdiction under the doctrine of *Railroad Commission v. Pullman Co.,* 312 U.S. 496 (1941).

In *Harris County Commissioners Court v. Moore,* 420 U.S. 77 (1975), this Court, in an opinion by Mr. Justice Marshall, restated the rule, first announced thirty-seven years ago, which, appellants have consistently argued, should dictate the result of the present suit. The Court stated:

> "In *Railroad Comm'n v. Pullman Co.,* 312 U.S. 496 (1941), the Court held that when a federal constitutional claim is premised on an unsettled question of state law, the federal court should stay its hand in order to provide the state courts an opportunity to settle the underlying state-law question and thus avoid the possibility of unnecessarily deciding a constitutional question. . . ."

420 U.S. at 83.

In applying the *Pullman* doctrine to require abstention and dismissal in a suit challenging the constitutionality of a Texas redistricting plan under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Court observed:

> "Among the cases that call most insistenly for absention are those in which the federal constitutional challenge turns on a state statute, the meaning of which is unclear under state law. *If the state courts would be likely to construe the statute in a fashion that would avoid the need for a federal constitutional ruling or otherwise significantly modify the federal claim, the argument for abstention is strong.* (See *Kusper v. Pontikes,* 414 U.S. 51 (1973); *Lake Carriers' Assn. v. MacMullan, supra; Harman v. Forssenius,* 380 U.S. 528 (1965); *Harrison v. NAACP, supra,* [360 U.S. 167 (1959)].)"

420 U.S. at 84; emphasis and bracketed language added.

Some years previous, in *Harrison v. N.A.A.C.P.,* 360 U.S. 167 (1959), this Court had explicitly recognized the advisability of withholding federal determinations of constitutionality of challenged statutes until they had been "exposed to state construction or limiting interpretation," specifically so that "federal judgment will be based on something that is a complete product of the state, the enactment as phrased by its legislature and as construed by its highest court" 360 U.S. at 178. In vacating the judgment of a three-judge District Court which had declared unconstitutional and enjoined enforcement

of three Virginia statutes, Mr. Justice Harlan for the Court in *Harrison* explained:

> "According every consideration to the opinion of the majority below, we are nevertheless of the view that the District Court should have abstained from deciding the merits of the issues tendered it, so as to afford the Virginia courts a reasonable opportunity to construe the three statues in question. . . .
>
> "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'scrupulous regard for the rightful independence of state governments . . . should at all times actuate the federal courts,' *Matthews v. Rogers,* 284 U.S. 521, 525, as their 'contribution . . . in furthering the harmonious relation between state and federal authority. . . .' *Railroad Comm'n v. Pullman Co.,* 312 U.S. 496, 501. In the service of this doctrine, which this Court has applied in many different contexts, no principle has found more consistent or clear expression that that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. See, e.g., *Railroad Comm'n v. Pullman Co., supra; Chicago v. Fieldcrest Dairies, Inc.,* 316 U.S. 168; *Spector Motor Service, Inc. v. McLaughlin,* 323 U.S. 101; *American Federation of Labor v. Watson,* 327 U.S. 582; *Shipman v. DuPre,* 339 U.S. 321; *Albertson v. Millard,* 345

U.S. 242; *Government & Civic Employees v. Windsor*, 353 U.S. 364. This principle does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise; it serves the policy of comity inherent in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication. See *Chicago v. Fieldcrest Dairies, Inc., supra,* at 172-173."

360 U.S. at 176-177.

The present suit is squarely within the class of cases, identified by the Court in *Harris County, supra,* in which the potential for avoidance of a federal constitutional ruling through a likely state construction of the statute makes the argument for abstention most compelling. As was pointed out to the District Court in support of appellants' Motion to Dismiss, although current pendency of a state action is not a prerequisite to *Pullman*-type abstention, several actions involving the very provisions of the Act held unconstitutional below were in fact pending in the California courts at the time the Motion to Dismiss was heard in the District Court (Appendix 92-96); and as was indicated on application for this Court's stay of the District Court's judgment, in at least two such actions now on appeal to the California Court of Appeal for the Third Appellate District (*Toyota Motor Distributors Inc. etc v. State of California, etc., et al.,* (3d Civil No. 16429) and *Fresno Imports Inc., etc. v. State of California,* (3d Civil No. 16430)), the appellate court's application of state law to substantive issues in those cases may well obviate the exercise of federal jurisdiction altogether,

or at the very least, "materially change the nature of the problem" (*Harrison, supra,* 360 U.S. at 177). See Appellants' Memorandum in Support of Application for Stay, November 18, 1977, pp. 4-5[14]; Jurisd. Stmt. p. 25, fn. 4.

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[14]Appellants' Memorandum, at the above referenced pages, stated:

"In *Toyota Motor Distributors, Inc., etc. v. State of California, etc., et al.* (3d Civil No. 16430) plaintiffs have appealed from trial court judgments rejecting, *inter alia,* claims that the Act constitutes an invalid exercise of the police power under the California Constitution and an impermissible delegation of legislative authority. Either of these issues could be dispositive on appeal. Although this Court has held that the Due Process Clause of the Fourteenth Amendment provides no basis for assessment of the ultimate wisdom of state legislation (*Williamson v. Lee Optical of Oklahoma* (1955) 348 U.S. 483, 487-488), the California Constitution's due process clause (Cal. Const. art. 1, § 7, subd. (a)) has provided California courts authority for inquiry into the validity of exercises of the police power. (*State Board of Dry Cleaners v. Thrift-D-Lux Cleaners,* 40 Cal.2d 436, 440-446, 449; *Blumenthal v. Board of Medical Examiners* (1962) 57 Cal.2d 228, 235-236; see *Allen v. California Board of Barber Examiners* (1972) 25 Cal.App.3d 1014, 1016-1017.) Nor have the California courts hesitated to inquire, under state law, into delegations of legislative power, such as the Act's, now being challenged for lack of adequate standards and safeguards in the *Toyota Motor Distributors, Inc.* and *Fresno Imports Inc.* appeals. (*Allen, supra,* 25 Cal.App.3d at 1016-1017; *Bayside Timber Co. v. Board of Supervisors* (1970) 20 Cal.App.3d 1, 11-13.) Moreover, while one California appellate court has perceived delegation of legislative power as a non-constitutional issue (*Allen, supra,* 25 Cal.App.3d at 1017), the California Supreme Court has more than once explicitly treated the propriety of delegation as a question of constitutional stature. (*Kugler v. Yocam* (1968) 69 Cal.2d 371, 376; *Wilke & Holzheiser Inc. v. Dept. of Alcoholic Bev. Control* (1966) 65 Cal.2d 349, 368-369.) Accordingly, the weight of California authority would treat both the issue of police power validity and the issue of delegation as questions to be resolved under the California Constitution, thus lending emphasis 'to the unsettled relationship between the state constitution and a statute' (*Harris County Commissioners Court v. Moore* (1975) 420 U.S. 77, 84) which fortifies the case for abstention. *Id.*"

2. Pending State Litigation May Result in a Construction of the Act Under State Law Which Will Obviate a Ruling on Appellees' Federal Constitutional Claims.

The California Automobile Franchise Act is susceptible to a state court construction which would avoid altogether the necessity of a federal constitutional ruling on the due process claim tendered by appellees. Specifically the California courts may, as a matter of state law, imply a requirement of an evidentiary hearing in connection with issuance of the Board's notification to the franchisor under Vehicle Code section 3062, even though the statutory language itself makes no specific mention of such a hearing.

In *Endler v. Schutzbank,* 68 Cal.2d 162 (1968) the California Supreme Court considered an order, issued by the State Corporations Commissioner to his licensees, which had the effect of barring a particular individual from employment in the finance business. The order had been issued without affording the affected individual an opportunity to be heard in his own defense, and no statute contained an explicit requirement for such a hearing. Nonetheless, concluding that a hearing was indeed required prior to imposition of such a disability, the Court observed that "[t]he commissioner's statutory authority to fashion an appropriate procedure cannot be doubted. (See, e.g., Fin. Code, §§ 22206, 22211, 22400, 22601-22617.)" 68 Cal.2d at 182, fn. 17.

In *Rios v. Cozens,* 7 Cal.3d 792 (1972), vacated and remanded 410 U.S. 425, reaffirmed 9 Cal.3d 454, the California Supreme Court examined a statute requir-

ing that the license of a driver of a vehicle involved in an accident be suspended upon the driver's failure to comply with the state's financial responsibility requirements. The California statute authorized the Department of Motor Vehicles to suspend the license of a driver involved in an accident resulting in bodily injury or property damage in excess of $200 unless he established financial responsibility by one of several methods. A precondition to suspension was a determination by the Department that there was "a reasonable possibility" that a judgment might be recovered against the driver in question. *Orr v. Superior Court,* 71 Cal.2d 220, 226 (1969); overruled in part in *Rios v. Cozens, supra,* 7 Cal.3d at 799. In concluding that the Due Process Clause of the California Constitution required a hearing upon the issue of culpability prior to suspension of the license under the statute, the Court in *Rios, supra,* ordered the Department to provide the driver an opportunity for a hearing. 7 Cal.3d at 799-800.

Judge Warren Deering, a leading commentator on California administrative law, has observed that the California Supreme Court's decisions in *Endler, supra,* and *Rios, supra,* indicate that the California courts will "search the governing statute to find the necessary authority for the agency to provide a hearing." Deering, *California Administrative Mandamus* (1977 Supp.) § 2.5, p. 7. If, as in *Endler* and *Rios,* California courts should identify the existence of interests which make a hearing necessary prior to issuance of the Board's order under California Vehicle Code section

3062, the circumstances recognized in *Endler* and *Rios* permit a California court to "find the necessary authority for the agency to provide a hearing." As discussed *ante,* at 7, several specific provisions of the California Administrative Procedure Act (Cal. Gov. Code §§ 11500 et seq.) provide the statutory blueprint for protest hearing procedure under the Automobile Franchise Act whenever such hearings are authorized. Cal. Veh. Code § 3067. A determination that state law requires a hearing prior to issuance of the Board's notification would, of course, result in complete avoidance of the federal constitutional question involved in the instant decision. *Reetz v. Bozanich,* 397 U.S. 82, 86-87 (1970).

The Act additionally provides both the means and the statutory authority to afford parties an evidentiary hearing promptly *after* issuance of the Board's notification to the franchisor under section 3062, if such a hearing were deemed required under state law. Assuming *arguendo* the correctness of the District Court's construction of section 3066(a), as requiring the New Motor Vehicle Board to order a hearing concurrently with its issuance of notification to the franchisor, if a state court were to hold as a matter of state law that a hearing must occur within a minimal period consistent with the requirements of due notice after the Board's notification to the franchisor is issued, the constitutional question of the necessity of a *prior* evidentiary hearing would be either avoided or substantially altered by, among other things, the short duration of the delay considered in light of the substantiality of the private and public interests being affected. See *Mathews v. Eldridge, supra,* 424 U.S. at 332-335, 347-349. Whether resulting procedures of the Board afforded an opportunity to be heard "at a meaningful time and in a meaningful manner" (*Armstrong v. Manzo,* 380 U.S. 545, 552 (1965)) would then be an issue subject to federal court inquiry upon a basis "that is a complete product of the state, the enactment as phrased by its legislature and as construed by its highest court." *Harrison v. N.A.A.C.P.,* 360 U.S. 167, 178 (1959).

3. The Nature of the Problem Presented by Appellees' Federal Claim May Be Substantially Altered by a State Court Construction of the Requirements of the Act.

The language of California Vehicle Code section 3062 requires the franchisor to notify its franchisees "in the event" that it proposes to relocate or establish a dealership (Cal. Veh. Code § 3062) but specifies no point in time when that notification is to be made. As indicated *ante,* at 37, under the unconstrued language of that section it is the franchisor who determines when the procedural provisions of the section will commence to function. The facts of the present case demonstrate that General Motors' enjoyment of unfettered discretion in the timing of its notifications under the unconstrued Act has resulted here in that appellee's issuance of its required notice only on the very day of its final approval of plaintiff Muller's relocation. In the case of the Fox enfranchisement, the subject of compliance with the Act was broached only on the eve of the event itself;

then, appellees Fox and General Motors deliberately chose to ignore the Act's franchisor notice requirements. See *ante,* at 9-10.

Nothing in the Act, of course, requires franchisors to delay the required notice until the very last minute, in such fashion as to maximize injuries resulting from any further delays. Indeed, it is entirely possible that a state court may construe the Act's language as *requiring* the franchisor to issue its notice to its franchisees and the Board at some particular and earlier point in time. In weighing the due process claim advanced by the summary judgment motion, the District Court rejected appellants' argument that an earlier issuance of notice by General Motors in the case of appellee Muller, and *any* form of compliance with the Act in the case of appellee Fox, might have served to render the operation of the Act somewhat less burdensome to all appellees. The District Court, however, apparently never considered the likelihood that a state court might so find upon similar facts,[15] or might authoritatively identify when it is that a franchisor "seeks to enter into a franchise establishing . . . or relocating . . . [a] motor vehicle dealership" within the incoming of section

[15]Even if a state court construction of the Act were to do no more than explicitly recognize that franchisors could time their notice of proposed action to occur at some point prior to the proposed franchisee's first day of business, the determinants of the question whether a hearing is required prior to issuance of the Board's notification would "at least substantially change the nature of the problem" presented in plaintiffs' claim (*Harrison v. N.A.A.C.P., supra,* 360 U.S. at 177) so as to render abstention appropriate. *Bellotti v. Baird,* 428 U.S. 132, 147-148 (1976).

3062, and is thus compelled to supply the required notification.

Thus in holding that ". . . the short answer . . . is that the plaintiffs had a constitutional right to do what they wanted to do, subject only to the restrictions of due process discussed herein", the District Court disregarded the reality that the language of section 3062 is susceptible of construction by the state courts, that a construction which gives concrete meaning to the words, "In the event that a franchisor seeks to enter into a franchise . . ." is possible upon the facts of this very case, and that such a construction would, if not avoid the need for a federal constitutional ruling, at the very least significantly modify the federal claim, and thus render abstention under *Pullman* both appropriate and necessary. *Harris County Commissioners' Court v. Moore,* 420 U.S. 77, 84 (1975).

CONCLUSION

For each of the foregoing reasons, it is respectfully submitted that the judgment of the District Court must be reversed.

Respectfully submitted,

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